

STATEMENT OF U.S. REP. GERRY STUDDS
COASTAL ZONE MANAGEMENT PROVISIONS
H.R. 5835--OMNIBUS RECONCILIATION BILL (Section 6217)
OCTOBER 26, 1990

Mr. Speaker, I would like to take a moment to clarify the intentions of the House and Senate conferees with respect to section 6217, establishing a new Coastal Nonpoint Pollution Control Program. This section is drawn largely from titles II and III of H.R. 2647, a bill to reauthorize the Coastal Zone Management Act (CZMA), as reported earlier this year by the Committee on Merchant Marine and Fisheries. A major difference is that section 6217 is drafted as a free-standing provision of law, rather than as amendments to the CZMA and the Clean Water Act (CWA).

The central purpose of section 6217 is to strengthen the links between Federal and State coastal zone management and water quality programs and to enhance State and local efforts to manage land use activities which degrade coastal waters and coastal habitats.

So-called "non-point source" pollution, caused by a variety of land use practices, is the leading cause of water quality degradation in many coastal water bodies. Section 6217(a) requires all coastal states to develop and implement a Coastal Nonpoint Pollution Control Program. Although the bill does not attempt to dictate who or what authorities within a state must meet this mandate, the Conferees intend that state coastal zone management authorities and water pollution control agencies will have a dual and co-equal role. In this respect, the division of responsibility at the state level will mirror that at the Federal level between the Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA).

The purpose of the nonpoint pollution control program is to develop and implement land use management measures that are needed to protect and restore coastal waters. Several points should be made about the intention of the Conferees with respect to these state programs:

First, the responsibility for developing and implementing land use management measures rests solely with the states, not with NOAA or EPA;

Second, the management measures are required -- at a minimum -- to conform to and comply with guidelines established by EPA, as provided under subsection (g);

Third, both the program and the management measures are to be integrated closely with other Clean Water Act and Coastal Zone Management programs. Thus, the new program will not and ought not bear the full burden of restoring and maintaining coastal water quality, but will operate instead in conjunction with controls on point sources established under the Clean Water Act and associated state programs.

Section 6217(a)(2) outlines requirements for integrating the new program into existing programs. The requirements are needed because of the free-standing nature of the new program and the concomitant need to minimize unnecessary duplication or conflicts at the Federal, state

or local level. This provision is intended to strengthen the requirements for protecting coastal waters that now exist in section 319 of the Clean Water Act and in the Coastal Zone Management program, as reflected in the implementation requirements in section 6217(c)(2).

Subsection (b) spells out the core requirements of the program. The first requirement is that states develop and implement management measures for the control of nonpoint sources of pollution in coastal waters generally. These management measures must -- at a minimum -- conform to the guidance developed by EPA pursuant to subsection (g).

The requirement that states develop and implement these management measures has been intentionally divorced from identified water quality problems because of the enormous difficulty of establishing cause and effect linkages between land use and water quality. The current water quality planning provisions and nonpoint source control provisions of the Clean Water Act suggest that states can only impose additional controls on nonpoint sources if they can demonstrate water quality problems. But the fact is that, with few exceptions, neither states nor EPA have the money or the time to create the complex monitoring programs that would be required to document a causal link between specific land use activities and specific water quality problems. Under the core program established in subsection (b), states will be able to concentrate their resources on developing and implementing measures that experts agree will reduce pollution significantly.

Subsection (b) also requires a second tier of pollution control efforts that are targeted to those coastal land uses that are recognized to cause or contribute to water quality problems generally. Paragraph (1) requires that the program identify land uses that may cause or contribute significantly to a failure to achieve or maintain water quality standards in coastal waters, or that foreseeably threaten coastal waters with increased pollution. The requirements of paragraph (1) are intended to mesh with and expand upon the basic obligation under the Clean Water Act for states to achieve and maintain water quality standards and designated uses. Where these standards or designated uses are not being achieved, paragraph (1) requires the imposition of additional management measures on land uses that contribute significantly to water quality degradation.

Paragraph (2) requires the identification of important coastal areas -- as contrasted to individual land uses under paragraph (1) -- that need additional measures to protect against anticipated pollution problems. Unlike paragraph (1), the imposition of additional management measures are not contingent upon identified water quality problems, and are to be established as a preventative step to avoid water quality problems that might otherwise develop.

For those land uses and critical areas identified in paragraphs (1) and (2), the subsection requires states to implement additional measures to achieve and maintain applicable water quality standards and to protect designated uses beyond those required in the core program. These additional measures will be developed by the individual states, tailored to the specific problems they must solve, and built upon technical guidance provided by EPA and NOAA.

Subsections (b)(4) and (5) provide for technical assistance and public participation under the program. Paragraph (6) outlines

administrative mechanisms to be developed to improve the integration of the program with existing state programs associated with land use, point source pollution and habitat protection. No one particular mechanism is required by this paragraph, but the establishment of appropriate mechanisms to achieve the desired coordination is required.

Subsection (b)(7) requires those administering the program at the state level to recommend modifications to the inland boundary of the coastal zone if necessary to achieve the purposes of the CZMA and this program. Paragraph (7) is to be understood in conjunction with the review of the same issue by NOAA and EPA, as required by subsection (e).

Subsection (c) provides for the review and approval of the state programs by NOAA and EPA. The Conferees expect that the Administrator of EPA and the Secretary of Commerce (the Secretary) will develop an explicit agreement on the appropriate division of agency responsibilities under this section. Recognizing EPA's role in controlling water pollution, the Conferees expect the Administrator to assume the lead responsibility under the agreement for determining how the new program will mesh with existing point source controls and whether states are meeting their obligation to achieve water quality standards and protect designated uses.

The Conferees expect that NOAA will assume primary responsibility for determining the appropriate role for state coastal zone management agencies in developing and implementing land use management measures. EPA would have the primary responsibility for assigning corresponding roles for approved state nonpoint source management programs under section 319 of the Clean Water Act.

Subsection (c)(2) provides for the implementation of the new program through existing state nonpoint source pollution and coastal zone management programs. The requirement to make necessary changes in those programs exists despite the fact that this section does not amend either section 319 of the Clean Water Act or the Coastal Zone Management Act.

Subsection (c)(3) requires that certain assistance under the Coastal Zone Management Act and the Clean Water Act be withheld if a state does not meet the requirements of this section. The authority to withhold funds shall be exercised in accordance with the agreed allocation of responsibilities between the two agencies pursuant to subsection (c)(1) and shall reflect EPA and NOAA's traditional responsibilities for the Clean Water Act and the CZMA, respectively. The conferees expect that the Administrator and the Secretary to consult closely with each other and with state officials prior to exercising this authority.

Subsection (d) requires the Secretary and the EPA to provide technical assistance to states to develop and implement their Coastal Nonpoint Source Control Programs. This technical assistance would extend beyond the development of guidance under subsection (g) to assistance in developing and evaluating additional management measures that may be required of states under the program.

Subsection (e) requires the Secretary, in consultation with EPA,

to review and make recommendations to states on the adequacy of the inland boundaries to their coastal zones. The Conferees intend this requirement to be read in conjunction with the obligation of states to review the adequacy of their inland boundaries and propose appropriate modifications, as called for under subsection (b)(7).

Subsection (g) requires EPA, in consultation with the Secretary, the U.S. Fish and Wildlife Service and other Federal agencies, to develop and publish guidance specifying the minimum management measures that will apply to state Coastal Nonpoint Pollution Control Programs. The Conferees intend that states, working from the guidance, will establish and implement in their programs the management measures provided for in that guidance.

Because state coastal zone management program are expected to serve as a major conduit for implementing these management measures, the Conferees fully expect that NOAA will play a major consultative role in developing the guidance under subsection (g) to ensure that state and local authorities will be able to implement the management measures called for by it.

Under this subsection, EPA will prepare guidance specifying management measures that could be used to control nonpoint sources of pollution that affect coastal waters. The Conferees expect that EPA, in developing its guidance, will concentrate on the large nonpoint sources that are widely recognized as major contributors of water pollution and on which there is broad consensus on the appropriate management measures that must be developed and implemented. These measures might include, among others, use of buffer strips, setbacks, techniques for identifying and protecting critical coastal areas and habitats, soil erosion and sedimentation controls, and siting and design criteria for water-related uses such as marinas.

Conversely, the Conferees also expect that EPA will not attempt to develop guidance for management measures that will unduly intrude upon the more intimate land use authorities properly exercised at the local level.

In one sense, subsection (g) directs EPA to develop the equivalent of technology-based controls for nonpoint sources, as it has done previously for point sources under the Clean Water Act. Those technology-based controls detail pollutant limits which apply to effluents discharged from industrial and municipal point sources. As defined in subsection (g)(5), the term "management measure" is patterned after the definition of "best available technology" under section 304(b)(2) of the Clean Water Act, which also speaks in terms of economic and technical achievability.

This does not mean, however, that the Conferees expect guidance under this section to have the same level of specificity for nonpoint sources as were developed by EPA for effluent guidelines under the Clean Water Act. This is true because the ability of a particular management measure to deal with nonpoint source pollution from a particular site will be subject to a variety of factors too complex to address in a single set of simple, mechanical prescriptions developed at the federal level. Thus, the Conferees expect EPA in its guidance to offer state officials a number of options and to permit them considerable flexibility in selecting the management measures

appropriate for their state. This flexibility is particularly important because states will, as previously mentioned, be required to demonstrate that they can implement management measures in conformity with the EPA guidance. It may be appropriate in certain circumstances for the guidance for particular management measures to apply regionally, rather than nationally, for those sources where regional differences are substantial and must be accounted for.

It is also important to emphasize that, unlike the EPA effluent guidelines for point sources, the nonpoint pollution management measures will not be directly or automatically applicable to categories of nonpoint sources as a matter of Federal law. Instead, these measures must be established under state law through the Coastal Nonpoint Pollution Control Program. This is reflected in a new section 306(d)(16) of the CZMA, provided for in section 6206 of this Act, which requires that state coastal zone programs shall provide for enforceable policies and mechanisms to implement the applicable management measures of this new program. In short, the management measures must be enforceable under state law.

Paragraph (3) of the subsection requires the Administrator, in consultation with the Secretary, to publish proposed guidance within 6 months after enactment of the section, and promulgate final guidance within 18 months. Since the guidance is a central part of the overall program, the Conferees have tied the dates by which states must submit their programs to the date of promulgation of the guidance. The Conferees are cognizant of the fact that by structuring the time requirements in this manner, delay by EPA could push back the entire effort. Accordingly, the Conferees expect that, if a delay develops, an action would certainly lie under Federal law to compel the Administrator to act promptly. Of course, the sufficiency of the guidance would be fully reviewable under the Administrative Procedures Act.

The Conferees recognize that the requirements of the new Coastal Nonpoint Pollution Control Program represent a substantial challenge to Federal and state authorities. Without doubt, the call for technology-based management measures on nonpoint sources is a substantial advance in the basic architecture of nonpoint source programs under the Clean Water Act. While these are similar in kind to the advances in 1972 that were made in controlling point sources, there remain important distinctions, as noted above. The Conferees expect that EPA, NOAA and other Federal authorities will proceed firmly but cautiously in developing the technology-based guidance that will serve as the core of the program, and that a productive partnership will be developed both between EPA and NOAA, and between Federal and state authorities, as they move to meet these new challenges.